



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 4314-00
26 September 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former commissioned officer in the United States Naval Reserve filed enclosure (1) with this Board requesting transfer to the Retired Reserve under the Provision of the Reserve Transition Benefits (RTB) program.

2. The Board, consisting of Mr. McCulloch, Mr. Pfeiffer and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 19 September 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner was released from active duty as a Naval Reservist on 31 December 1990. At that time he had completed 11 years, 1 month and 21 days of active service and 12 years of qualifying service for reserve retirement. The record shows that he was paid \$24,000 in separation pay. He was promoted to LCDR (O-4) on 1 September 1992.

d. A Statement of Service for Naval Reserve Retirement shows that Petitioner was credited with qualifying years for retirement in the anniversary years ending 28 October 1992, 1993 and 1994, for a total of 15 qualifying years for reserve retirement. He was transferred to a nonpay status on 1 December

1994 due to his loss of a valid mobilization billet. He apparently did not drill after that date and was honorably discharged on 1 April 2000.

e. Petitioner states that he was not informed that the RTB program allowed reservists to retire with 15 years of qualifying service if they lost their pay billets. He has submitted documentation showing that on 31 March 2000 he submitted a request for 15 year retirement. That same day the Commanding Officer, Naval Air Station, Joint Reserve Base, Willow Grove confirmed that Petitioner met the requirements for RTB program retirement and forwarded the request for retirement stating, in part, as follows:

... Member was not counseled about the (RTB) program when he lost his pay billet two months after completing 15 years of service. Member recently learned of the (RTB) program from an active duty acquaintance, hence the late submission of his retirement package and RTB request.

On 3 May 2000 the Commander Naval Reserve Force disapproved the request because the RTB application must be submitted within 40 days of transfer to a nonpay status. Petitioner was informed that if he believed he had suffered an injustice, he should submit an application to this Board.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner's application for early retirement was denied solely because he had not meet the requirement that the application for retirement be submitted within 40 days. It was clear to the Board that if Petitioner had been aware of the program, it would have been in his best interest to request early retirement and he would have submitted such a retirement request. Therefore, the Board concludes that Petitioner's naval record should be corrected to show that he transferred to the Retired Reserve with eligibility for retired pay at age 60 on 1 January 1995.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 1 January 1995 he transferred to the Retired Reserve with

eligibility for retired pay at age 60 under the provisions of the RTB program.

b. That this Report of Proceedings be filed in Petitioner's naval record.

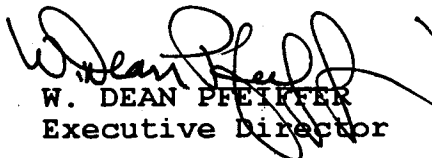
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director